

Handling Electronic Information
By Tina Lau

Many of us store important files on computers at work and use email regularly to communicate with customers and co-workers. While e-mail is a quick and efficient means of communication, there are some common misconceptions people have when using it. These misconceptions can often lead to trouble, especially if an organization becomes a party in a lawsuit.

Typically in a lawsuit, the opposing parties undertake what is known as “discovery” “Discovery” is the process by which each side obtains information and documents from the other side that relates to the suit in question. In December of this year, amendments to **Rules 26 and 34 of the Federal Rules of Civil Procedure** will make the discovery of electronic information easier and more commonplace. Lawyers will be able to access more information quickly; instead of leafing through hundreds of documents, they can use a “search” function on electronic documents to target their inquiries. Email messages especially are used in litigation to establish facts and intent. Below are some common tips to keep in mind when using email at work:

- Keep your writing professional and use the same rules as when writing a business letter. Just because it is electronic doesn't mean it is acceptable to write something inappropriate.
- Remember that emails are not confidential and are not limited to the recipients. In the discovery process any document that is not specifically protected (i.e. by the attorney-client privilege) is fair game to the other side.
- Avoid slang, exaggeration, or aggressive language that can be taken out of context (i.e. avoid writing things like: “let's kill them”). The opposing side will always interpret a message in the least favorable way so it is important to keep the context clear.
- Deleted messages can often be retrieved. If you send or receive an email with damaging content, it is likely to be around later for the other side to discover.
- Avoid inappropriate or aggressive jokes in emails because they can be misinterpreted. Judges and juries have a hard time believing "it was just a joke."
- Self-edit your emails. Think about how the email could be read in court. Wait a while between writing the message and sending it, and re-read the email from a fresh perspective.

For more information on electronic data discovery and the new rules, please use this link: http://www.uscourts.gov/rules/EDiscovery_w_Notes.pdf.

Questions or comments about this article? Please contact Tina Lau at Tlau@Graniterock.com